

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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THOMAS HART, LISA HART, KEVIN MCDONALD,
SARAH MCDONALD, 1667 WESTERN AVENUE,
LLC and RED-KAP SALES, INC.,

Docket No.: 1:20-CV-475
(MAD/DJS)

Plaintiffs,

- against -

NOTICE OF MOTION

TOWN OF GUILDERLAND, PLANNING BOARD
AND ZONING BOARD OF APPEALS OF
GUILDERLAND, PYRAMID MANAGEMENT GROUP,
LLC, RAPP ROAD DEVELOPMENT, LLC and
CROSSGATES RELEASECO, LLC,

Defendants.

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PLEASE TAKE NOTICE that upon the Declaration of Robert S. Rosborough IV, Esq., dated May 25, 2020, the exhibits annexed thereto, the accompanying memorandum of law, and all prior proceedings herein, Defendants Town of Guilderland, Planning Board and Zoning Board of Appeals of Guilderland, Pyramid Management Group, LLC, Rapp Road Development, LLC and Crossgates Releaseco, LLC (collectively, "Defendants") will move this Court at the United States District Court for the Northern District of New York located at the James T. Foley U.S. Courthouse, Suite 509, 445 Broadway, Albany, NY 12207 on June 30, 2020, or as soon thereafter as counsel may be heard for an order: (1) pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), dismissing the Complaint filed by Plaintiffs Thomas Hart, Lisa Hart, Kevin McDonald, Sarah McDonald, 1667 Western Avenue, LLC and Red-Kap Sales, Inc. in its entirety, with prejudice; (2) awarding the Pyramid Defendants their reasonable attorneys' fees pursuant to 33 U.S.C.

§ 1365(d), 16 U.S.C. § 1540(g)(4), and 42 U.S.C. § 1988(b);¹ and (3) granting Defendants such other and further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to this Court's scheduling order dated May 18, 2020, Plaintiff's opposition, if any, shall be filed and served on or before June 15, 2020; and

PLEASE TAKE FURTHER NOTICE that, Defendants intend to submit a reply; and

PLEASE TAKE FURTHER NOTICE that, pursuant to this Court's scheduling order dated May 18, 2020, Defendants' reply, if any, shall be filed and served on or before June 19, 2020.

Dated: May 25, 2020

WHITEMAN OSTERMAN & HANNA LLP

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¹ The Town of Guilderland Defendants do not join the request for an award of reasonable attorneys' fees.